



Court File No. **VLC-S-S-131912**

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DONALD CUNDELL, ANDREW MONNETTE, TIMOTHY MITCHEL  
NOME, CHARLES WHITE, PETER ASHTON, JAMIE CLIFF, DOUGLAS  
GUYATT, GAGANDEEP RAKHRA and THE WEST COAST PRISON  
JUSTICE SOCIETY

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA and MINISTER OF PUBLIC SAFETY  
FOR CANADA

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

### **CLAIM OF THE PLAINTIFFS**

#### **Part 1: STATEMENT OF FACTS**

1. Charles White is a federal prisoner, age 35, residing in Mountain Institution in Agassiz, British Columbia.
  2. Peter Ashton is a federal prisoner, age 46, residing in Mountain Institution in Agassiz, British Columbia.
  3. Gagandeep Rakhra is a federal prisoner, age 23, residing in Mountain Institution in Agassiz, British Columbia.
  4. Jamie Cliff is a federal prisoner, age 38, residing in Kent Institution in Agassiz, British Columbia.
  5. Donald Cundell is a federal prisoner, age 29, residing in Mission Institution in Mission, British Columbia.
  6. Douglas Guyatt is a federal prisoner, age 67, residing in Mountain Institution in Agassiz, British Columbia.
  7. Timothy Mitchel Nome is a federal prisoner, age 38, residing in Atlantic Institution in Renous, New Brunswick.
  8. Andrew Monnette was a federal prisoner at the material time, age 22, residing in the Victoria Salvation Army Community Residential Facility in Victoria, British Columbia.
- (Collectively, the "Individual Plaintiffs")
9. The West Coast Prison Justice Society ("WCPJS") is a not-for-profit society founded in 1993 and incorporated under the Society Act, RSBC 1996, c 433 and has its head office at 201-33241 Walsh Avenue, Abbotsford, British Columbia, V2S 1Z9.

10. At all material times, Her Majesty the Queen in Right of Canada operated the Correctional Service of Canada ("CSC"). This proceeding is taken against CSC in the name of the Attorney General of Canada and the Attorney General is joined as a party pursuant to the provisions of the Crown Liability and Proceedings Act, RSC 1985, c C-50. The defendant CSC has an address for service at 900-840 Howe Street, Vancouver, British Columbia, V6Z 2S9.
11. The defendant the Minister of Public Safety (the "Minister"), was at all material times the Minister overseeing the operation of the CSC. The defendant Minister has an address for service at 900-840 Howe Street, Vancouver, British Columbia, V6Z 2S9.

### **The Decision by the Executive**

12. In September, 2012 the Minister undertook a review of part-time chaplaincy contracts across the Correctional Service of Canada ("CSC") and concluded that all part-time chaplaincy contracts across Canada should be cancelled based on the Minister's determination that it is not in the public interest to expend taxpayer funds on such services (the "Decision").
13. As a result of the Minister's Decision, the part-time contracts of the Buddhist, Jewish, Wiccan, Muslim, and Sikh chaplains in British Columbia were not renewed as of September, 2012.
14. There remain numerous full-time chaplains and three part-time chaplains in British Columbia, all of whom are of Christian faith.
15. As of March, 2013 all other part-time chaplaincy contracts across Canada will not be renewed and the Minister has directed that none will be entered into in the future.
16. The Decision has eliminated all minority faith chaplains in British Columbia and will leave only two minority faith chaplains in all of Canada as of March, 2013.

### **The Religious and Spiritual rights of the Individual Plaintiffs**

17. The Individual Plaintiffs are all members of non-Christian religions. All regularly accessed the services of contracted, minority faith chaplains, including Buddhist, Jewish, Wiccan, Muslim, and Sikh chaplains.

### **Charles White**

18. Charles White is 35 years old. He is currently serving a two and a half year sentence for breaching a Long Term Supervision Order. Mr. White became Buddhist while in federal custody on a previous sentence and has been practicing Buddhism for approximately 9 years.
19. Mr. White identifies as a Tibetan Buddhist of the Gelug Lineage and has developed an in-depth and very personal practice which he can only share with his spiritual leader, currently Chaplain Mak.

20. Mr. White met with Chaplain Mak whenever she came to the institution unless he was prevented from doing so. She gave him a feeling of balance, centeredness and self-awareness that uplifted him spiritually and mentally.
21. Chaplain Mak guided group sessions where people could ask questions and seek guidance; she helped them discuss their spirituality and guided them in meditation.
22. Buddhism has given Mr. White a feeling of belonging for the first time in his life. He has learned compassion and to not be self-centered in his actions.
23. Prior to finding Buddhism, Mr. White had no connection with his family. He credits his spiritual practice for allowing him to reach out and reconnect with his family members who have become very important to him.
24. Mr. White suffers from Bipolar Disorder. To him, his spiritual health is directly linked to his mental health. When he feels spiritually supported, balanced and uplifted, he experiences greater emotional control.
25. Mr. White now feels a deep sense of loss and anxiety without a spiritual leader, leaving him ill at ease and irritable. He has a history of depressive episodes and is on medication to help him stabilize his moods while he is experiencing this deep personal loss.
26. Mr. White is deeply afraid that without continued spiritual guidance he may become discouraged and slip away from his Buddhist practice. He fears that he will lose the benefit he has gained from his spiritual practice. He has made significant progress and is devastated at the thought of losing all that he has gained.
27. Mr. White has requested access to Buddhist support outside of the institution, but CSC has not supported his requests.
28. He has also requested spiritual ministry from the remaining chaplains who are Catholic and Protestant, but they are unable to minister to him in the Buddhist faith.
29. No Buddhist volunteers have seen Mr. White since the cancelation of Chaplain Mak's contract.
30. Mr. White feels alone and disheartened. He feels belittled and disrespected in the absence of his spiritual leader and advocate.

**Peter Ashton**

31. Peter Ashton is a 46 years old man serving a life sentence. He is a devout Buddhist and has been practicing for approximately 20 years. In 1997, Mr. Ashton, with the assistance of a Buddhist chaplain, was the first prisoner in North America to receive monastic vows.
32. Mr. Ashton's Buddhist practice is very private and the details of it are only shared with his Buddhist chaplain, Chaplain Mak.

33. Chaplain Mak is Mr. Ashton's connection to the Buddhist community, upon which he relies for his spiritual growth.
34. Mr. Ashton sought consistent spiritual guidance from Chaplain Mak. He trusted that she knew and understood his practice and could answer questions about his spirituality.
35. Mr. Ashton acknowledges that he was a very violent person before he found Buddhism. Now rather than lashing out, he looks inwards when dealing with frustration. Mr. Ashton now describes himself as a mellow, non-violent man who is a good influence on other prisoners. Mr. Ashton is certain that if he had not embraced Buddhism he would be dead.
36. Chaplain Mak previously helped Mr. Ashton find materials that were tailored to his practice. Now he has no way to access new reading materials.
37. Without a consistent Buddhist leader, Mr. Ashton has no one to share his practice with, no one to talk to about his spirituality in confidence and he is losing his connection to the Buddhist community.
38. Buddhism is the core of Mr. Ashton's identity it is instrumental to his rehabilitation. He feels frustrated, alone and devastated by the loss of access to Chaplain Mak.

#### **Gagandeep Rakhra**

39. Gagandeep Rakhra is only 23 years old. He is serving a five year prison sentence. Mr. Rakhra was born into a Sikh family and has identified as Sikh his entire life. As a teenager he drifted away from the Sikh faith and began associating with people who were a bad influence on him. Mr. Rakhra states that he was lost, not caring who he hurt.
40. Since entering the prison system he has reached out to his religious community through the Sikh prison Chaplain, Harkirat Singh. With the guidance of Chaplain Singh, Mr. Rakhra, has been reconnecting with his faith, learning more about his religion and considering the impact of his actions on others.
41. Mr. Rakhra went to Chaplain Singh to pray and learn which he largely cannot do alone due to his limited understanding of written Punjabi.
42. Chaplain Singh was also a key link between Mr. Rakhra and the Sikh community outside of prison. He helped Mr. Rakhra feel that he has not been abandoned and gave him hope that he will be accepted into a supportive community when he is released.
43. Mr. Rakhra has experienced prejudice and racism against him as a Sikh in the prison system which has made the support of Chaplain Singh even more important to him. Chaplain Singh created a safe environment for Mr. Rakhra and other Sikh prisoners. Chaplain Singh was the only person that Mr. Rakhra felt completely at ease with and could speak openly and honestly to.
44. Reconnecting with his faith has also greatly strengthened Mr. Rakhra's relationship with his family. His family is his primary support system and it is very important to both Mr. Rakhra and his family to know that he can go to Sikh services regularly.

45. Mr. Rakhra feels abandoned and is very afraid that the loss of Chaplain Singh will impair his rehabilitation. The loss of the Sikh chaplain has also put stress on his relationship with his family.
46. Mr. Rakhra has not seen any Sikh volunteers, has no way to contact Chaplain Singh and has no religious leadership to turn to.

**Donald Cundell**

47. Donald Cundell is 29 years old and has been in prison his entire adult life for an incident involving family violence when he was a minor. He came into the federal prison system as a youth in great need of support, guidance and community, which he found in spirituality. Mr. Cundell relies heavily on his Wiccan spirituality to guide him through his extended incarceration.
48. Mr. Cundell has forged a close spiritual bond with Kate Hansen, the Wiccan priestess formerly contracted by CSC to provide Pagan based chaplaincy services to federal prisoners throughout British Columbia.
49. During her time as Wiccan chaplain Mr. Cundell met with Chaplain Hansen for guidance at every opportunity and relied on her to help him grow in his spirituality and to advocate for his spiritual needs with CSC. Mr. Cundell considers Chaplain Hansen both a spiritual advisor and trusted confidant.
50. During his incarceration Mr. Cundell has endured periods of great mental and emotional stress and crisis. His connection with Chaplain Hansen provided him with a positive outlook on his surroundings and activities. Having a consistent relationship with Chaplain Hansen has raised Mr. Cundell above his feelings of negativity and hopelessness and instilled in him positivity. Her visits have become central to helping Mr. Cundell deal with his negative feelings.
51. Through the spiritual guidance and logistical support of Chaplain Hansen, Mr. Cundell has recently reconnected with his mother. Mr. Cundell harboured a great deal of anger towards his family and it was only through the spiritual guidance of Chaplain Hansen that he discovered how much he benefits from the connection with and support of his family.
52. Chaplain Hansen provided Mr. Cundell with many spiritual items including books, incense, an incense holder, candles, symbols of the elements and seasons and an altar cloth. She advocated with CSC to ensure he was allowed access to his spiritual items.
53. Mr. Cundell's spiritual growth has allowed him to begin atoning for his crime and given him a level of self-confidence and strength that he lacked as a youth.
54. Mr. Cundell suffers greatly in the absence of visits from Chaplain Hansen. He no longer has her regular guidance, support or spiritual ministry to help him progress in his rehabilitation and keep him from becoming negative and isolationist.

- 55. Without Chaplain Hansen as a support and advocate for his spiritual rights, Mr. Cundell is feeling deeply disrespected and unsupported by CSC and the Canadian government generally.
- 56. Mr. Cundell is more anxious, negative and unable to deal with his frustrations positively since he no longer has visits from Chaplain Hansen.

**Jamie Cliff**

- 57. Jamie Cliff is 38 years old and is serving a life sentence. He has been Muslim all his life.
- 58. Mr. Cliff was involved in gangs and violence. He has turned to Islam to help him steer away from that path. Through Islam he has learned to control his temper and immerse himself in a positive lifestyle.
- 59. Mr. Cliff normally attended Friday service with Shawkat Hasan, the Imam contracted to provide Islamic chaplaincy services.
- 60. Chaplain Hasan's visits made Mr. Cliff feel revitalized in his commitment to act appropriately and to continue in his rehabilitation.
- 61. He relied on Chaplain Hasan to offer him religious support, answer his questions about religion and to be his connection to the outside Islamic community.
- 62. Chaplain Hasan brought Mr. Cliff religious study materials and taught him how to pronounce Arabic.
- 63. Mr. Cliff has made progress in his rehabilitation through his work and connection with the chaplaincy.
- 64. Mr. Cliff was saddened by the departure of Chaplain Hasan, he feels persecuted and anxious. He cannot understand why something that was such a positive force in his life was taken away from him.
- 65. The Muslim group at Mr. Cliff's institution has asked for permission to meet during the week, much like the Christian Bible study groups are allowed to meet regularly, but this has not been facilitated. Mr. Cliff feels frustrated and belittled because the Muslim group is not being given this permission.
- 66. Muslim prisoners still gather for group prayer on Friday, which is now often led by a prisoner in absence of the Muslim chaplain.
- 67. Chaplain Hasan used to provide an important link between Mr. Cliff and CSC. Mr. Cliff felt that Chaplain Hasan helped CSC staff to understand and respect Islam.
- 68. Recently, Shawkat Hasan has begun to visit Mr. Cliff's Muslim group as a volunteer. He comes less often and less consistently and does not have the same access to prisoners or CSC staff as he did when he was a contracted chaplain.

69. Mr. Cliff is very worried that Shawkat Hasan will not be able to continue coming to visit him as a volunteer and fears that CSC staff will not understand his religious needs and will not respect his religious rights without having a Muslim chaplain to advocate for him.

**Douglas Guyatt**

70. Douglas Guyatt is 67 years old. He has been in prison for approximately 18 years and became eligible for parole 3 years ago. Mr. Guyatt is a practicing Wiccan and has self-identified as Wiccan for 15 years.
71. Prior to turning to Wicca Mr. Guyatt was Christian, but he never felt connected to that faith. Unlike Wicca, it did not provide him the spiritual understanding and support that he needs to be the man he wants to be.
72. During his incarceration, Mr. Guyatt has learned to live by the tenets of Wiccan spirituality, including: the empowerment and equality of all people; respect for self, others and the earth; and, the need to face adversity with serenity and patience. Mr. Guyatt's meditation practice and connection to Wicca help him to control his temper and avoid violence.
73. Mr. Guyatt tried to teach himself about Wicca for nearly 12 years, but it was only when he met Chaplain Hansen three years ago that he began to practice Wicca more formally and began to expand his spiritual knowledge and practice. Mr. Guyatt met with her regularly, almost every time she attended his institution. Through his connection with Chaplain Hansen, he gained a new and more fulfilling perspective on his spiritual identity.
74. Mr. Guyatt also relied heavily on Chaplain Hansen to provide him with spiritual items including books and incense.
75. Mr. Guyatt was abandoned by most of his family and friends when he entered prison. In absence of any other support network, it is important for Mr. Guyatt to have a compassionate person to turn to when he needs to talk. For years that compassionate soul has been Chaplain Hansen.
76. Without visits from Chaplain Hansen, Mr. Guyatt feels that he is losing the closeness of his spiritual bond with her and with the Wiccan community. He is able to contact her by phone which is the only way he is managing.
77. The Wiccan group at Mountain Institution has no leader and the volunteers who used to attend with Chaplain Hansen do not come without her. Mr. Guyatt also has no way to access books for self-study.
78. Mr. Guyatt is concerned that institutional policy at Mountain will limit his ability to practice his spirituality. Prior to the cancellation of her contract, Chaplain Hansen would bring candles into the institution and would advocate for Mr. Guyatt's access to such items. Candles are very important to Mr. Guyatt's practice. In Mr. Guyatt's experience,



without Chaplain Hansen coming to the institution regularly, institutional policy will bar his access to these items without exception.

**Timothy Mitchel Nome**

79. Timothy Mitchel Nome is 38 years old and is serving an indeterminate sentence for assault causing bodily harm, which is currently under appeal. At the material time, Mr. Nome resided in segregation at Mountain Institution in Agassiz, British Columbia. Mr. Nome has since been transferred and is now in segregation in Atlantic Institution in Renous, New Brunswick.
80. Mr. Nome is a lifelong practicing Orthodox Jew, as well as treaty Cree. He prays every morning, mid-morning, before meals and before bed. He also follows a Kosher diet.
81. Mr. Nome attended services with the Jewish chaplain, Rabbi Dina-Hasida Mercy, approximately every two (2) weeks. Sometimes he requested that Rabbi Mercy attend the prison more frequently.
82. Volunteers would attend the institution with Rabbi Mercy; however, in her absence they did not visit Mr. Nome by themselves.
83. Rabbi Mercy did visit Mr. Nome in segregation; however, the time limits in segregation made it difficult for him to see her. After her contract was not renewed, Mr. Nome did not have any spiritual support in segregation; even from the remaining Christian chaplain who he did not see visit the segregation unit at all.
84. Rabbi Mercy advocated for Mr. Nome with various institutions when he was having difficulty accessing a Kosher diet and ensured that CSC understood his religious needs and practices. Without a Rabbi contracted to advocate with CSC, Mr. Nome continues to have difficulty accessing a proper Kosher diet and traditional clothing which respects his Orthodox religious traditions.
85. Through prayer and religious ministry, Mr. Nome developed a positive relationship with Rabbi Mercy and Rabbis at other federal institutions. He trusted Rabbi Mercy as a religious advisor and confessor.
86. Jewish chaplains have intervened to help Mr. Nome through crisis on several occasions. Mr. Nome credits the ministry and support of these Rabbis with saving his life. He believes he would have committed suicide had he not received emergency religious support from these individuals.
87. Near the end of September, 2012, Mr. Nome was told by Rabbi Mercy that she would no longer be employed as a chaplain. He has not seen her since.
88. Mr. Nome was in segregation at that time and, to his knowledge, was the only Jewish prisoner in Mountain Institution. He had no one to turn to for religious ministry or support.

89. Mr. Nome felt abandoned. He was left with no one to pray and celebrate with for significant Jewish holidays. He also had no one to turn to with questions about his religious practice.
90. At the material time Mr. Nome was facing a transfer to Atlantic Institution where he feared he would have no access to a Rabbi or Jewish community. Rabbi Mercy was advocating keeping Mr. Nome in British Columbia when her contract was not renewed. He has subsequently been transferred to Atlantic Institution.
91. In the absence of a Jewish chaplain, Mr. Nome's mental and emotional states are deteriorating and it is negatively impacting his relationship with the prison administration.

#### **Andrew Monnette**

92. Andrew Monnette is 22 years old and was released from custody at Mountain Institution on November 28, 2012 after serving a sentence of approximately two years and two months for robbery, assault with a weapon and breach of probation. He has been Muslim for five years.
93. Mr. Monnette converted to Islam while he was in a youth custody facility. He regularly sought the spiritual guidance of the Imam, with whom Mr. Monnette has a good relationship. Mr. Monnette saw the Imam as family, and when the Imam visited him, Mr. Monnette felt like nothing could hurt him or bring him down.
94. The Imam listened to Mr. Monnette, taught him how his actions affected others and referred him to verses in the Qur'an. He taught Mr. Monnette that his bad behaviour would later negatively affect him.
95. Mr. Monnette used to care only about himself and did not understand the impact his actions had on others. He disrespected his mother, took illicit drugs, drank alcohol and smoked cigarettes.
96. Through Islam, Mr. Monnette now respects and obeys his mother, and has quit smoking, drinking alcohol and taking drugs. He is also trying to re-establish a relationship with his child and child's mother, whom he abandoned in the past.
97. Mr. Monnette sees Islam as central to his re-integration into the community, as well as encouragement to leave his negative influences and relationships behind.
98. Mr. Monnette had no spiritual leader to turn to for guidance once the Imam's contract was not continued. While in segregation, he was limited in his ability to practice his faith. He was placed in segregation without any accommodation, including a Qu'ran, and did not have contact with the Imam to assist him in accessing the materials and guidance that he required.

99. He did not see any volunteer Imams or Islamic volunteers since the Imam's contract was terminated, and could not seek support from other Muslim prisoners because he was in segregation.
100. Mr. Monnette feels that his religion was not being respected as compared to Christianity. The absence of the Imam made Mr. Monnette's time in segregation very frustrating and difficult for him.
101. Without the Imam, Mr. Monnette felt hopeless and without a vital confidante and counselor. He felt that he could not speak to guards, mental health staff or other prisoners about his feelings. Previously, the Imam would help him control his tendency to lash out in anger or frustration by giving him spiritual guidance.

### **WCPJS**

102. The primary project of WCPJS is Prisoners' Legal Services ("PLS"). PLS is a legal clinic providing services to prisoners in the province of British Columbia since 1980. Until 2002, PLS was operated by the Legal Services Society of British Columbia. In 2002, PLS became a project of WCPJS. PLS is the only clinic of its kind in Canada.
103. PLS has a mandate to further the purposes of WCPJS, including:
  - (a) To promote the fair and equal treatment of prisoners, by assisting prisoners who face discrimination based on such matters as sex, aboriginal origin, race, colour, religion, national ethnic origin, age or mental or physical disability;
  - (b) To encourage the application of the Canadian Charter of Rights and Freedoms inside prisons and penitentiaries; and,
  - (c) To promote the principle that incarcerated people must be treated with fairness and dignity.
104. PLS promotes the equality of a particularly marginalized population of people. Prisoners are inherently vulnerable by virtue of their incarceration. Persons with mental health and addiction issues, Aboriginal people and people living in poverty are heavily over-represented within Canadian prisons.
105. Since its inception, PLS has advocated for prisoners in matters affecting their residual liberties, has engaged in public education and has created a multitude of legal education resources for prisoners. All advocates at PLS have telephone contact with prisoners throughout British Columbia five days a week.
106. Since 2007, PLS has undertaken strategic human rights litigation to remedy systemic discrimination faced by prisoners in provincial and federal institutions including access to spiritual and religious services.
107. WCPJS has sufficient interest to be granted public interest standing, in that:

- (a) This claim raises a serious challenge to the constitutionality of the Minister's Decision and the positive obligation on CSC to provide a service to a uniquely vulnerable population without discrimination;
- (b) WCPJS, through PLS, has a demonstrated, serious and genuine interest in the subject matter of this litigation and is the only organization in Canada which is so situated;
- (c) The issue of access to chaplaincy services is relevant to all prisoners across Canada as well as the public at large. Given the positive role of religion and religious leadership in a prisoner's rehabilitation and reintegration, public safety throughout Canada may be impacted by the determination of this issue;
- (d) PLS is the only service of its kind which is open to all prisoners within its territorial jurisdiction to allow them to voice concerns; and,
- (e) It is unreasonable to expect prisoners with no access to the internet, very little access to library resources and highly controlled access to phone calls, to bring on and carry through to completion, a lengthy and involved legal challenge of the type set out in this claim. Individual prisoners do not have the ability to communicate between institutions to bring a claim collectively and are at constant risk of being transferred out of the region during the course of litigation.

#### **Role and importance of the chaplaincy in federal institutions**

- 108. The prison chaplaincy "brings light to dark places." It is an integral and trusted link for prisoners who are reaching out to their religious community. It provides spiritual guidance in times of crisis, assists prisoners in reshaping how they interact with the world, gives prisoners a trusted and compassionate outlet for their thoughts and feelings and assists prisoners in reintegrating into society as law abiding citizens.
- 109. For many prisoners, being incarcerated is a time to redevelop their religious roots as one means of working towards their rehabilitation. For individuals who have strayed from their religious community, or who were never seriously involved in their religious community prior to incarceration, the chaplaincy provides that link to community.
- 110. Having a chaplain of one's own faith visit regularly and make a lasting connection helps prisoners feel that they have not been abandoned by society. These chaplains help bring prisoners back to their religious paths and provide them a link to the outside world which brings not only comfort and hope, but provides an accepting and nurturing community for many prisoners to turn to as they prepare for release.
- 111. Some prisoners convert to a new religion or discover religion for the first time while incarcerated. Chaplains play an integral role in that process. For a prisoner seeking a new religion, the ability to readily seek advice from a spiritual leader of that faith is paramount.

112. In the absence of professional chaplaincy services, prisoners who are uniquely vulnerable due to their incarceration, may have few family supports and may suffer mental illness, are susceptible to unprofessional and potentially damaging religious influences.
113. Minority faith chaplains provide a safe and appropriate way for prisoners to explore new religious paths. These services cannot be provided through multi-faith pastoral care; they require faith specific expertise.
114. Multi-faith chaplaincy is premised upon the principle that a chaplain 'cares for all and ministers to his own.' This principle recognizes the divide between general pastoral caring and faith specific religious ministry which must be provided by a leader within a given faith tradition.
115. Many individuals find great solace in gathering with fellow prisoners of their faith for prayer, discussion, contemplation and meditation. These groups are largely not available to minority faith prisoners without a chaplain present.
116. The need for a faith connection is significantly more important for prisoners in segregation. For prisoners in segregation, a meeting with a chaplain, even through the food slot in the door to a segregation cell can bring immeasurable comfort.
117. Individuals struggling with addiction are overrepresented in the prison population. For a significant number of these individuals, religious ministry and support play an integral role in their recovery process.
118. Many chaplains also play a very direct role in sentencing, release and reintegration by advocating for individuals during sentencing and parole hearings and connecting their clients with community resources and supports upon release.
119. Chaplains are integral to helping prisoners through crisis. This can include spiritual ministry, helping prisoners connect with family and being a strong and consistent resource during time of grieving, frustration and hopelessness.
120. For many prisoners, chaplains are a unique and trusted outlet for expressing feelings, frustrations and worries. Prisoners often do not trust CSC staff with their feelings and concerns. They worry that expressing their feelings may be used against them and will not provide them any positive support. Many individuals are also unable to turn to fellow prisoners with their concerns. Appearing 'soft' or vulnerable in prison can put an individual at risk to their personal safety.
121. Prisoners do not lose their right to freely express their religious and spiritual beliefs by virtue of their incarceration, except as explicitly required by the carceral context. Chaplains representing a prisoner's faith are that prisoner's life-link to ensuring that CSC respects those rights.

### **CSC's Obligation to protect religion and spirituality**

122. CSC has a positive obligation to ensure that the fundamental religious and equality rights of prisoners are respected by providing reasonable access to religion and spirituality to all prisoners regardless of their religious belief.
123. Prior to October, 2012, CSC contracted part-time chaplaincy services to provide minority faith services. These chaplains were hired on an as needed basis and most part-time chaplains travelled to nearly every federal institution in British Columbia.
124. These part-time chaplains have considerable experience, training and education in their respective religious traditions. Most are professional religious ministers and all have the experience to provide professional faith-specific pastoral and ministry services.
125. These part-time chaplains provided faith-specific ministry, assisted prisoners in accessing spiritual items and religious diets, advocated for prisoners, welcomed prisoners who showed interest in learning about a new religion and assisted people to successfully reintegrate into the outside community upon release.
126. These chaplains were paid for a certain number of hours per month. They were also provided with limited refunds for travelling expenses.
127. CSC regularly consulted with minority-faith chaplains when interpreting CSC policy on religious and spiritual accommodation and in assessing individual requests for spiritual accommodation including diet, religious items and religious observance.

### **Limits on Prisoners' access to Religion and Spirituality**

128. Prisoners are uniquely vulnerable by virtue of their incarceration. CSC maintains total effective control over their daily living conditions and access to resources. Unlike almost any other individual in Canada, prisoners cannot attend a church, temple, mosque, etc. to learn about a religion and meet that religious community. Neither can a prisoner simply choose to wear a religious symbol, eat a kosher diet or pray five times a day.
129. Prisoners have limited access to religious ministry which is usually provided through group meetings with faith-specific chaplains. Many of these groups also welcome individuals who are seeking a new religious community and connection.
130. Accessing religious accommodation, however, often requires much more than attending group services. Many chaplains will connect regularly with a prisoner over the course of months prior to advocating with CSC for their religious and spiritual accommodation.
131. Prisoners seeking permission to participate in religious practice, activities or ministry may request religious accommodation through the CSC written request process. This system requires that a prisoner 'prove' their religious connection which may be nearly impossible without regular connection to a faith-specific chaplain.
132. Prisoners cannot reach out to the community to find religious and spiritual support due to limits on who they can call and their complete lack of internet access.

133. CSC treats security as paramount, often resulting in the denial of religious items deemed not absolutely 'required' to practice or express one's religion. Such decisions may be made on the basis of security despite a lack of evidence that these spiritual items pose a security threat to any individual or the system.

#### **Current Access to Religion and Spirituality**

134. CSC and the Minister have stated that chaplaincy services will be provided to minority faith prisoners through:
- (a) Multi-faith chaplaincy; and,
  - (b) Volunteers.
135. Prisoners in British Columbia currently have access to full-time, Christian faith chaplains. Through these full-time chaplains, prisoners are allowed to request faith-specific services and accommodation; however, with limited exceptions, the Individual Plaintiffs report that volunteers are not entering the prisons to provide such services and no other accommodation is being made.
136. Furthermore, Individual Plaintiffs report that requests for spiritual items are being returned by CSC staff stating that the prisoner must bring the request to their spiritual leader.
137. Christian prisoners continue to have access to multiple Christian masses, bible study sessions and other faith-based activities every week.
138. Since the cancellation of part-time chaplaincy services in British Columbia, CSC has failed to facilitate any consistent or fulsome access to minority faith chaplains, religious services or spiritual items.
139. In October 2012, CSC refused entry of a former chaplain who attempted to enter one institution as a volunteer because he no longer had security clearance.
140. The Individual Plaintiffs report that two volunteers have entered certain institutions to provide limited services. These services are not being provided to all faiths, are not provided consistently, or in a manner equivalent to how they were provided prior to the Minister's Decision to discontinue part-time chaplaincy contracts.

#### **Part 2: RELIEF SOUGHT**

1. The Plaintiffs claim against the Defendants:
- (a) A declaration that the Minister has exercised his executive power in a manner inconsistent with section 2(a) of the *Charter of Rights and freedoms* (the "Charter"), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11;

- (b) A declaration that the Minister has exercised his executive power in a manner inconsistent with section 7 of the *Charter*;
- (c) A declaration that the Minister has exercised his executive power in a manner inconsistent with section 15 of the *Charter*;
- (d) An order requiring that the Minister, and/or his servants, agents or otherwise, reinstate and continue the contracts of the minority faith chaplains in British Columbia in the same manner in which they existed prior to September 2012;
- (e) Costs; and
- (f) Such further and other relief this Honourable Court considers just.

### **Part 3: LEGAL BASIS**

#### **1. The Plaintiffs rely on:**

- (a) The *Charter* and, in particular, ss.1, 2(a), 7, 15 and 24(1) thereof.
- (b) The *Corrections and Conditional Release Act* and, in particular, ss 3(b), 4(d) and 75 thereof.
- (c) The *Corrections and Conditional Release Regulations* and, in particular, ss. 100 and 101 thereof.

#### **Section 2(a)**

- 2. CSC is obligated to provide reasonable opportunities to freely and openly participate in, and express, religion or spirituality, subject only to safety and security concerns.
- 3. Prisoners are uniquely vulnerable due to the control which CSC holds over their day to day accommodation and treatment. Prisoners live in a security focused environment, in which many of their rights and freedoms are greatly limited for security reasons. In recognition of this vulnerability CSC must be guided by the fundamental principle that prisoners retain the rights of all members of society except those that are lawfully and necessarily removed or restricted as a consequence of their sentence.
- 4. The Decision of the Minister to review and cancel part-time chaplaincy contracts, which is subject to *Charter* scrutiny, has emptied minority- faith prisoners' fundamental right to freedom of religion of all practical meaning, in violation of s. 2(a) of the *Charter*.
- 5. As a result of the Decision, CSC is no longer discharging its burden to protect prisoners' *Charter* protected religious and spiritual rights.

#### **Section 7**

- 6. The Decision by the Minister engages the Individual Plaintiffs' life, liberty, or security of the person interests by depriving the Individual Plaintiffs of their right to access chaplain



services. This increases the risk that their rehabilitation, including rehabilitation for drug and alcohol addiction, and reintegration into the community will be unsuccessful; that they will be refused early or statutory release into the community; that they will be re-incarcerated if released; and, that they will continue to abuse drugs and alcohol, leading to a further risk of re-incarceration and risk of harm to their health or loss of life.

7. The Decision by the Minister further engages the Individual Plaintiffs' security of the person interests by depriving them of the ability to develop their faith or attain spiritual goals which will cause serious state-imposed psychological stress.
8. This deprivation of life, liberty, and security of the person fails to comply with the principles of fundamental justice because it is arbitrary, overbroad, and grossly disproportionate in its effects compared to any legitimate government interests.

### **Section 15**

9. The Decision by the Minister infringes the Individual Prisoners' right to equality under s. 15(1).
10. Once government provides a service, it has a constitutional obligation to do so equitably and without discrimination based on an enumerated or analogous ground.
11. The Minister has stated that the cancellation of contracts is not aimed at cancelling minority faith services, but rather cancelling part-time chaplaincy services for budgetary reasons. Substantive equality, however, demands that the impact of this decision be examined.
12. The impact of the Decision is the cancelation of all minority-faith chaplains in British Columbia, leaving the Individual Plaintiffs without guidance, services or spiritual refuge.
13. The inequality imposed is directly related to the religious identity of the affected prisoners. Regardless of the intent of the Minister, the result has been to create an environment which espouses the Christian faith above all others and creates an atmosphere which is hostile to minority faith prisoners.
14. This distinction, which is based entirely on religion, places a clear burden and disadvantage on minority faith prisoners which perpetuates prejudice against them and is not reflective of their characteristics or abilities.

### **Section 1**

15. The violations of ss. 2(a), 7, and 15 cannot be justified pursuant to the criteria of s. 1, the burden of proof of which lies on CSC and the Minister.

Plaintiffs' address for service: Fasken Martineau DuMoulin LLP  
2900 - 550 Burrard Street  
Vancouver, BC V6C 0A3

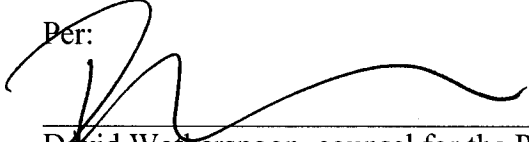
Place of trial: Vancouver

The address of the registry is: The Law Courts  
800 Smithe Street  
Vancouver, BC

FASKEN MARTINEAU DuMOULIN LLP

Per:

Dated: March 14, 2013

  
David Wotherspoon, counsel for the Plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

The Solicitors for the Plaintiffs are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 – 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: 604-631-3179. (Reference: 900303.00295/14288.

## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

1. A challenge to the constitutionality of the use of executive power by the Minister of Public Safety to cancel all part-time chaplaincy contracts within the Correctional Service of Canada. The result of which has been the cancelation of all minority faith chaplaincy services in British Columbia.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

### Part 4:

1. Charter of Rights and freedoms (the "Charter"), Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c 11
2. *Corrections and Conditional Release Act*, SC 1992, c 20